Petition

81-1937

Supreme Court, U.S.
FILED
APR 19 1982
ALEXANDER L. STEVAS
CLERK

CASE NO.

in the

Supreme Court

of the

United States

OCTOBER TERM 1981

MICHAEL BOOTH, LARRY JOSEPH LANCELOTTI, GREGORY LEE LANCELOTTI, IRVING F. IMOBERSTAG, JACOB SCHNURMAN, BRADFORD ELDO RUSH, RANDALL COLLINS, JEFFREY ALLEN BROWN AND ROBERT LAWLER,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

CONSOLIDATED PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MELVYN KESSLER, Esquire
and
ARTHUR W. TIFFORD, Esquire
Co-Counsel for Petitioners
1531 N.W. 15 Street Road
Miami, Florida 33125
305-324-4104

QUESTIONS PRESENTED

1. Whether the Circuit Court erred in affirming the lower court's denial of Petitioner's pretrial motion to dismiss the conspiracy charged (Count I) in the indictment on double jeopardy grounds when prosecutors in diverse districts unilaterally filed piece-meal separate indictments in order to multiply a known single, on-going conspiracy into several prosecutions?

2. Whether Circuit Court erred in affirming the trial court's denial of Petitioners' motion to dismiss the conspiracy charged (Count I) in the indictment on due process and *petite* policy grounds when prosecutors in diverse districts unilaterally filed piece-meal separate indictments in order to multiply a known single, on-going conspiracy into several prosecutions?

3. Whether the Circuit Court erred, denying the Petitioners' due process of law, when it affirmed the trial court's refusal to accord Petitioners an evidentiary hearing relative to their pretrial motion to dismiss Counts I and II on both double jeopardy and due process grounds?

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	i
Statutes Involved	2
Statement of Facts	3-7
Reasons for Granting the Writ	7-18
Conclusion	19
Appendix A—Opinion of Court Below	App. 1-9
Appendix B—Judgment Below	App. 10-18
Appendix C—21 U.S.C. 841(a)(1) and 21 U.S.C. 846	App. 19-21
Appendix D—28 U.S.C. 1291	App. 22
Appendix E—"Miami" Indictment	App. 23-45
Appendix F—"Maine" Indictment	App. 46-54
Appendix G—"Miami" Superseding Indictment	App. 55-76
Appendix H—Government Memorandum Opposing Admission to Bail Pending	App. 77-83

TABLE OF CITATIONS

Page

CASE AUTHORITIES

Abney v. United States,
431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) 4

Ashe v. Swenson,
379 U.S. 436, 454, 90 S.Ct. 1189 (1970) ..... 14 (footnote 6)

Benton v. Maryland,
395 U.S. 784, 796, 23 L.Ed.2d 707, 89 S.Ct. 2056 (1969) 8

Braverman v. United States,
317 U.S. 49, 52, 87 L.Ed. 23, 63 S.Ct. 99 (1942) 9

Brown v. Ohio,
432 U.S. 161, 165, 53 L.Ed.2d 187, 97 S.Ct. 2221 (1977) 8, 9

Grafton v. United States,
206 U.S. 333, 27 S.Ct. 749, 51 L.Ed. 1084 (1907) 14

Jeffers v. United States,
432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1978) 8

TABLE OF CITATIONS (Continued)

Page

CASE AUTHORITIES

North Carolina v. Pearce,
395 U.S. 711, 717, 23 L.Ed.2d 659, 89 S.Ct. 2072 (1969) 8

Petite v. United States,
361 U.S. 529, 80 S.Ct. 450, 4 L.Ed.2d 490 (1960) 13

Rinaldi v. United States,
434 U.S. 22, 98 S.Ct. 81, 54 L.Ed.2d 207 (1977) 13

Robinson v. United States,
341 F.2d 379 (1st Cir. 1965) *cert. denied*, 381 U.S. 945 17

Russell v. United States,
341 F.2d 379 (1st Cir. 1965) 17

United States v. Chagra,
653 F.2d 26 (1st Cir. 1981) 7, 10, 11

United States v. Dunbar,
611 F.2d 985 (5th Cir. 1980) 17

United States v. Futch,
637 F.2d 386 (5th Cir. 1981) 17

TABLE OF CITATIONS (Continued)

Page

CASE AUTHORITIES

United States v. Inmon,
568 F.2d 326 (3d Cir. 1977) *appeal after remand*, 594 F.2d 352 *cert. denied*, 444 U.S. 859 17

United States v. Mallah,
503 F.2d 971 (2d Cir. 1974) *cert. denied* 420 U.S. 995 (1975) 17

United States v. Marabie,
578 F.2d 151 (5th Cir. 1978) 7-8, 10, 12

United States v. Martinez,
562 F.2d 633 (10th Cir. 1977) 12

United States v. Ruigomez,
576 F.2d 1149 (5th Cir. 1978) 10, 11

United States v. Stricklin,
591 F.2d 1112, 1122 (5th Cir. 1979) 11, 17

United States v. Tercero,
580 F.2d 312 (8th Cir. 1979) 11, 12

STATUTORY AUTHORITIES

21 *United States Code* 841(a)(1) 2, 4

21 *United States Code* 846 2

STATUTORY AUTHORITIES (Continued)

	Pages
21 *United States Code* 848	3
21 *United States Code* 952	4
21 *United States Code* 963	4
28 *United States Code* 1254(1)	2
28 *United States Code* 1291	2, 4

OTHER AUTHORITIES

Rules of United States Supreme Court

Rule 22 2

CASE NO.

in the

Supreme Court

of the

United States

OCTOBER TERM 1981

MICHAEL BOOTH, LARRY JOSEPH LANCELOTTI, GREGORY LEE LANCELOTTI, IRVING F. IMOBERSTAG, JACOB SCHNURMAN, BRADFORD ELDO RUSH, RANDALL COLLINS, JEFFREY ALLEN BROWN AND ROBERT LAWLER,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

CONSOLIDATED PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners, MICHAEL BOOTH, LARRY JOSEPH LANCELOTTI, GREGORY LEE LANCELOTTI, IRVING F. IMOBERSTAG, JACOB SCHNURMAN, BRADFORD ELDO RUSH, RANDALL COLLINS, JEFFREY ALLEN BROWN and ROBERT LAWLER, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-styled case on March 19, 1982.

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix A hereto, *infra*, (pp. App. 1-9) is reported at ____ F.2d ____ (1st Cir. 1982).

JURISDICTION

The judgment of the Court of Appeals was entered on March 19, 1982, Appendix B, *infra* (p. App. 10-18). No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Rule 22, *Rule of the United States Supreme Court.*

STATUTES INVOLVED

The Federal statutory provisions involved, 21 U.S.C. 841(a)(1) and 846 are set forth in Appendix C, *infra* (App. 19-21). The statutory authorization for interlocutory appeals from pretrial orders directed to non-frivolous double jeopardy claims, 28 U.S.C. 1291, is set forth in Appendix D, *infra* (App. 22).

STATEMENT OF THE FACTS

On November 9, 1979 an indictment was returned in the Southern District of Florida charging these Petitioners and others with a conspiracy commencing ". . . prior to June, 1973 and continuing up to and including the date of filing of the indictment, in the Southern District of Florida *and elsewhere* . . ." Appendix E, *infra* (App. 23-45). Count I of the Miami indictment alleged a single conspiracy to "knowingly and intentionally possess with intent to distribute marijuana," in violation of Title 21, *United States Code*, Section 841(a)(1). The Petitioners were arrested in Hancock County, Maine on October 20, 1980 and indicted in Maine on October 29, 1980. The indictment in the lower proceedings alleged a conspiracy commencing on or about March 20, 1980 and continuing ". . . up to and including October 20, 1980 . . ." *in the District of Maine.* Appendix F, *infra* (App. 46-54). The Maine indictment alleged, in pertinent part, a conspiracy between the Petitioners and others ". . . to knowingly and intentionally possess with intent to distribute a quantity of marijuana . . . in the District of Maine . . . ." (*Id.*)

After a month of conferences between the Government attorneys for the District of Maine and the Southern District of Florida, which followed the Petitioners' arrest in Maine, on November 24, 1980 the Miami indictment was superseded. Appendix G, *infra*, (App. 55-76). The superseding Miami indictment charged the same conspiracy in Count I as was alleged in the original Miami indictment but charged a co-defendant in the Florida proceedings with a continuing criminal enterprise in violation of 21 *United States Code* 848 from sometime ". . . prior to April, 1974 continuing up

to and including the date of the filing of this indictment, in the Southern District of Florida *and elsewhere* . . ." The violations constituting the continuing criminal enterprise alleged in the superseding indictment purportedly involved 21 *United States Code*, Sections 841(a)(1), 952 and 963.

On July 14, 1981 Petitioners filed their original motion to dismiss Count I of the Maine indictment based only upon double jeopardy grounds. That motion was amended on August 11, 1981. The trial court denied the amended motion on September 11, 1981 in an *ore tenus* ruling later confirmed in writing.

The Petitioners filed their Notice of Appeal on September 16, 1981 seeking review of the denial of the motions pursuant to Title 28, *United States Code*, Section 1291 and *Abney v. United States*, 431 U.S. 651, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977). The Circuit Court concluded it had jurisdiction. Appendix A, *infra* (App. 4).

Between Petitioners' arrest in Hancock County, Maine on October 20, 1980 and the filing of the superseding indictment in Miami, the Government prosecutors in the District of Maine and the Southern District of Florida conferred for several purposes. One of those purposes was the division of the prosecutions between the two districts. Although dividing the two prosecutions the Government knew and later acknowledged (Appendix H) that it was dividing one single conspiracy into two separate prosecutions, accomplishing this bifurcation through the simple expediency by pleading different dates for the same conspiracy in the three (3) indictments. Compare Appendices E, F and G.

The Government's knowledge of the *de facto* single conspiracy was manifest. First, in a formal motion filed in the United States Court of Appeals for the Fifth Circuit in the matter of a co-defendant's motion for admission to bail pending appeal from another, unrelated conviction.[1] (Appendix H) In that motion the Government said at page three, (App. 79),

> "That there was proof at the trial of some 70 tons of marijuana being smuggled into this country by a group of people that used a "Church" (sic) as a cover. That *this conspiracy* was ongoing for at least eight years *including the importation in Maine* . . . ." (emphasis added)

The "70 tons" referenced by the Government when it admitted to the Fifth Circuit the existence of only one conspiracy "including the imporation into Maine . . ." included in the tonnage count the marijuana seized on October 20, 1980 in Hancock County, Maine and referenced in the Maine indictment.

Second, the prosecutor's argument to the Miami jury in that trial described a single scheme and conspiracy including the events in Maine. There the prosecutor said: "Well, maybe it wasn't coincidence. Maybe it was a common scheme. Maybe it was a plan. Maybe it was his motive for being there." And later added: "(a)nd I want to show you some of the common occurrences or the common scheme and the common plan between these people, such as addresses; 6724 S.W. 12 Street."

---

[1]That matter has been transferred to the United States Court of Appeals for the Eleventh Circuit, Docket No. 81-5321 and 81-5640.

And: "(t)here was one conspiracy,[2] one to import, one to possess with intent to distribute, but it wasn't as if there is a bunch of little conspiracies, one for Dunnellon, one for Crystal River, and one for Peter's Boat. It was one big plan, one big scheme and different people had different parts, but it was all the same conspiracy." The Government emphasized to the Florida District Court that the events in Maine were part of the single scheme or plan ". . . (i)f he tells me it's a coincidence, I can take the fact that he was in Maine and decide whether I think it was a coincidence or whether I think it was part of *that scheme* and part of *that plan.*" (emphasis added)

Third, even prior to the Government's arguments to the jury in the Florida prosecution it consistently urged the trial court there to allow into evidence testimony concerning the events in Waldo and Hancock Counties, Maine as "similar offense" evidence to prove *the common plan or scheme* later argued to the jury *op. cit.*, and because the conspiracy alleged in the indictment below (Appendix F) was a continuation of the same conspiracy alleged in the Florida indictment (Appendix G). The Government resisted the defense attempts to exclude the "Maine" evidence by saying at (R. Vol. VIII, No 30, Tr. Vol. 14 p. 23-23), ". . . (i)t is not a new conspiracy (in Maine), your Honor . . ." and ". . . I don't think he is completely out of Maine, if we *can*[3] show that this is a

---

[2]These quotations are from the Record on Appeal to the First Circuit, R. Volume VIII, No. 30: Transcript Volume 16, pp. 75, 79, 88 and 98.

[3]The transcript reads "can't" but this is an obvious typographical error, easily so determined when the sentence is considered in complete context.

continuation of the original conspiracy when you show that it is done the same way by the same people."[4]

Fourth, an overwhelming number of defendants below were also defendants in the conspiracy alleged in the Florida indictment. Compare Appendices F and G: 10 of the 23 defendants indicted in the conspiracy. They include Clifton Ray Middleton, Larry Joseph Lancelotti, Gregory Lee Lancelotti, Michael Booth, Irving F. Imoberstag, Jacob Schnurman, Bradford Eldo Rush, Randall Collins, Jeffrey Allen Brown and Robert Lawler.

REASONS FOR GRANTING THE WRIT

1. Whether the Circuit Court erred in affirming the lower court's denial of Petitioner's pretrial motion to dismiss the conspiracy charged (Count I) in the indictment on double jeopardy grounds when prosecutors in diverse districts unilaterally piece-meal separate indictments in order to multiply a known single, on-going conspiracy into several prosecutions?

The first question presented concerns a fundamental question of this Court's parameters on the applicability of the double jeopardy clause to multiple prosecutions against a concededly single, on-going conspiratorial agreement. It requires the Court to balance judicial admissions of a single conspiracy by one prosecutor against the carving of an indictment around the factors listed by the Circuit Courts in *United States v. Chagra*, 653 F.2d 26 (1st Cir. 1981) and *United States v. Marable*,

---

[4]These quotations are from the Record on Appeal before the Circuit Court, R. Volume VIII, NO. 30: Transcript Volume 14, pp. 23-24.

578 F.2d 151 (5th Cir. 1978) by another prosecutor in order to circumvent the Double Jeopardy protections accorded by the Fifth Amendment of the United States Constitution as interpreted by this Court in *Jeffers v. United States*, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d 168 (1978).

The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or after conviction. It also protects against multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717, 23 L.Ed.2d 659, 89 S.Ct. 2072 (1969); *Brown v. Ohio*, 432 U.S. 161, 165, 53 L.Ed.2d 187, 97 S.Ct. 2221 (1977).

> "The fundamental nature of the guarantee against double jeopardy can hardly be doubted. Its origins can be traced to Greek and Roman times, and it became established in the common law of England long before this nation's independence . . . . The underlying idea, one that is deeply ingrained in at least Anglo-American systems of jurisprudence, is that the *state with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.* This underlying notion has from the very beginning been part of our constitutional tradition. That the right to trial by jury it is clearly 'fundamental to the American scheme or justice.' " *Benton*

v. Maryland, 395 U.S. 784, 796, 23 L.Ed.2d 707, 89 S.Ct. 2056 (1969). (emphasis added)

". . . the Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedience of dividing a single crime into a series of temporal or spatial units." *Brown v. Ohio, supra*, 432 U.S. at 169; *cf. Braverman v. United States*, 317 U.S. 49, 52, 87 L.Ed. 23, 63 S.Ct. 99 (1942).

The instant indictment arises out of the same criminal act, occurrence, episode or transaction for which the Petitioners were charged and tried previously. The Petitioners were convicted on June 19, 1981 of conspiracy to possess with intent to distribute marijuana based upon a certain factual matrix. That conspiracy is the same conspiracy presently charged in Count I of the indictment below. Appendix F, *infra* (App. 46-54). That there was and is but one single on-going conspiracy charged in both the Maine and the Florida indictments and litigated previously in the District Court in Miami is established by both the Government's admissions, conduct and Circuit Court decisions. The Government admissions include, at the least, Appendix H, which emphasizes that the one, on-going conspiracy "included the importation in Maine . . ." That the Miami indictment was superseded on November 24, 1980 so as to expand the parameters of Count VI against Mr. Middleton only (the contining criminal enterprise count) but not expand the dates in the indictment to the conspiracy alleged in Miami renders obvious that the prosecutors carved up the transaction and activities into the two separate prosecutions in an attempt to circumvent the applicable decisional law.

The test formulated by the circuits for resolving the questions of identity of offenses in double jeopardy analysis is based upon three cases: *United States v. Marable*, 578 F.2d 151, 153 (5th Cir. 1978), *United States v. Ruigomez*, 576 F.2d 1149 (5th Cir. 1978) and *United States v. Chagra, supra.* The *Marable* court said at p. 153: ". . . whether proof of the matter set out in second indictment is admissible as evidence under the first indictment, and, if it is, whether a conviction could have been properly sustained on such evidence." This "same offense" test is more exacting than the test used by the circuit courts in *narcotics conspiracies. United States v. Ruigomez*, 576 F.2d 1149 (5th Cir. 1978). This is because the "same offense" test authorized by *Marable* is insufficient to protect against double jeopardy and due process violations when dealing with complicated but single narcotics conspiracies. (*Id.*) Otherwise the law would permit the government arbitrarily to split narcotics conspiracies to initiate many prosecutions. Conspiracies to traffic in drugs are ordinarily of a continuing sort: once the parties have agreed to the criminal enterprise, the day-to-day operations of buying, transporting and selling are handled without the necessity of renewing the underlying consentual agreement. *United States v. Ruigomez, supra.*

The tests for determining the existence of a unified narcotics conspiracy include:

1. The participants share a *continuing*, common goal of buying and selling marijuana for profit.

2. The operations of the conspiracy following an unbroken and repetitive pattern.

3. A cast of conspirators remaining much the same.

4. The location of the conspiracy.

United States v. Ruigomez, supra; United States v. Stricklin, 591 F.2d 1112, 1122 (5th Cir. 1979); *United States v. Tercero*, 580 F.2d 312 (8th Cir. 1978). Citing from its decision in *United States v. Chagra*, the Circuit Court below added three factors: (1) whether the same statutory provision was involved in both conspiracies, (2) the time during which the activities occurred and (3) whether the same evidence was used to prove the two other conspiracies. Appendix A, *infra* (App. 1-9). The first question for this Court to resolve, therefore, is which tests should be employed in determining the existence of a single, on-going conspiracy for purposes of the protections accorded by the Double Jeopardy Clause. The second question to be resolved is whether the Petitioners have satisfied the correct criteria.

The Petitioners contend that *Ruigomez*, *Stricklan* and *Tercero* should control and that the facts demonstrate the particular transactions alleged in the Maine indictment are within a larger unified conspiracy alleged in the Miami indictments.

1. *Sharing a continuing, common goal of buying and selling Marijuana for profit.* This is manifest from the face of the indictments and the evidence adduced in the Florida District Court trial.

2. *Operations following an unbroken and repetitive pattern.* This is also manifest from a comparison of the *modus operandi* evidenced during the hearing on the

motion to suppress in the District of Maine and the Crystal River and Dunnelon seizures evidenced in the Miami trial.

3. *Cast of conspirators remaining much the same.* The key word here is "much the same." Below 10 of the 23 defendants were also charged in the Florida indictment, a number of overlapping defendants dramatically greater than the two which the court of appeals in *United States v. Martinez*, 562 F.2d 633 (10th Cir. 1977) did not find sufficient to determine the existence of a single conspiracy.

4. *The location of the conspiracy.* The Florida indictment alleged the existence of a conspiracy in the Southern District of Florida *"and elsewhere."* Appendices E and G. (emphasis added) The 10 defendants charged in both the Maine and Florida conspiracies all resided in the Southern District of Florida.[5] The Florida indictment also alleged that the Ethiopian Zion Coptic Church was a "cover" for the marijuana smuggling organization, and almost every defendant below professed membership in that church.

That totality of the circumstances, therefore, clearly demonstrates ". . . that the two alleged conspiracies are in reality part of a single conspiracy" or, said otherwise, that there was only one conspiratorial agreement. *United States v. Tercero, supra*, at 315; *United States v. Marable, supra* at 153, which must be shielded from multiple prosecution and punishment.

---

[5]Jeffrey Allen Brown has remained incarcerated since his arrest in Maine on October 20, 1980.

The writ therefore should issue.

2. Whether the Circuit Court erred in affirming the trial court's denial of Petitioners' motion to dismiss the conspiracy charged (Count I) in the indictment on due process and *petite* policy grounds when prosecutors in diverse districts unilaterally piece-meal separate indictments in order to multiply a known single, on-going conspiracy into several prosecutions?

The Due Process Clause, the common law and *Petite Doctrine* preclude the separate, successive prosecution of the Petitioners on the conspiracy count (Count I) of the Maine indictment.

A. The Petite Doctrine.

Comparing Appendix F with Appendix G evidences the "carving up" of the one on-going conspiracy and enterprise by the prosecutors' unilateral division of that single conspiracy. This "carving-up" was effected without the prior authorization of the Attorney General, thus violating a doctrine established in *Petite v. United States*, 361 U.S. 529, 80 S.Ct. 450, 4 L.Ed.2d 490 (1960).

It is government policy ". . . that several offenses arising out of a single transaction should be alleged and tried together and should not be made the basis of multiple prosecutions." *Petite v. United States*, 361 U.S. at 530. This policy is dictated by considerations of fairness to defendants and efficient and orderly law enforcement. The *Petite* policy recently was reenforced by the Fifth Circuit after the remand of proceedings before this Court in *Rinaldi v. United States*, 434 U.S. 22, 98 S.Ct. 81, 54 L.Ed.2d 207 (1977). *Rinaldi* was based

upon a successive federal prosecution involving an identical factual matrix to an earlier state prosecution against some of the defendants. In remanding the proceedings the Court said at 434 U.S. 29:

> "The (Petite) policy is useful to the efficient management of limited executive resources and encourages local responsibility in law enforcement but it also serves the more important purpose of protecting the citizen from any *unfairness* that is associated with successive prosecution based upon the same conduct."[6] (emphasis added)

Successive prosecutions in different federal courts for the same offense impermissibly violate the Double Jeopardy Clause since both courts are "arms of the sovereign," *Grafton v. United States*, 206 U.S. 333, 27 S.Ct. 749, 51 L.Ed. 1084 (1907). The *Petite Policy* which was designed to protect against duplicative federal-state prosecutions, necessarily acts to protect against multiple federal prosecutions, although not through a constitutional mandate.

---

[6]See also the concurring opinions of Messrs. Justices Brennan, Marshall, and Douglas in *Ashe v. Swenson*, 379 U.S. 436, 454, 90 S.Ct. 1189 (1970):

> ". . . The Double Jeopardy Clause requires the prosecution, except in most limited circumstances, to join at one trial all the charges against the defendant that grow out of a single criminal act occurence, episode or transaction . . . . The consolidation in one lawsuit of all issues arising out of a single transaction or occurence best promotes justice economy and convenience."

The unilateral carving-up of the one enterprise or conspiracy into the piece-meal, successive prosecutions now evident is an evil which cannot be tolerated. While a separate prosecution *may* be permitted where the government is unaware of other crimes arising out of the same transaction, the government cannot make that claim in this instance.

B. Fundamental Fairness.

The totality of the prosecutorial conduct in dividing the one, on-going conspiracy to prosecute the Petitioners for a second time using the same evidence as substantive proof is a calculated overbearance of the extraordinary power yielded by those who prosecute in the name of the United States Government. The writ therefore should issue.

3. Whether the Circuit Court erred, denying the Petitioners due process of law, when it affirmed the trial court's refusal to accord Petitioners an evidentiary hearing relative to their pretrial motion to dismiss Counts I and II on both double jeopardy and due process grounds?

On August 11, 1981, and September 11, 1981 when some portions of the discussions between the United States Attorney's Offices for the District of Maine and the Southern District of Florida were referenced, an evidentiary hearing was requested by the Petitioners. No hearing was afforded, however, thus denying Petitioners due process of law as guaranteed by the Fifth Amendment.

The hearing would have provided the Petitioners an opportunity to develop the facts concerning the conferences and discussion between the prosecuting offices and among the prosecutors themselves. Such questions as:

1. Why was the continuing criminal enterprise count (Count VI) in the Florida indictment superseded and enlarged to include the events in Maine through October 20, 1980 and the conspiracy count (Count I) was not?

2. Why did the prosecutor in the Southern District of Florida offer the evidence of the events in Maine through October 20, 1980 as "extrinsic evidence" of other crimes to prove a *common scheme or plan* between the Maine and Florida events? (emphasis added)

3. Why did the prosecutor advise the Court of Appeals for the Fifth Circuit as recently as July 18, 1981 that the conspiracy was on-going, covering at least 8 years and "included the importation in Maine?"

4. How did the prosecutors in the District of Maine determine that the conspiracy it alleged to the Grand Jury in Maine began "on or about March 19, 1980 . . ." and concluded on "October 20, 1980" and occurred only "in the District of Maine?"

5. Whether the prosecutors agreed, expressly or tacitly, to supersede the Florida indictment by enlarging only the continuing criminal enterprise allegation and leaving the Florida conspiracy allegation so that two conspiracy cases could be prosecuted seriatum?

6. Whether the two prosecuting offices advised the Attorney General of the successive prosecution which would occur in Maine when both conspiracy allegations were presented to the diverse grand juries in the two districts?

The Petitioners carried the burden of proving their double jeopardy plea to Count I of the indictment below. *Russell v. United States*, 341 F.2d 379 (1st Cir. 1965); *Robinson v. United States*, 341 F.2d 379 (1st Cir. 1965), *cert. denied*, 381 U.S. 945. Only after a non-frivolous *prima facia* showing supporting the plea of double jeopardy was demonstrated would the burden shift to the government to prove the conspiracies alleged in the two indictments (Appendices F and G) were separate crimes. *Russell v. United States* and *Robinson v. United States*, both *supra*, *United States v. Mallah*, 503, F.2d 971 (2nd Cir. 1974), *cert. denied*, 420 U.S. 995 (1975); *United States v. Inmon*, 568 F.2d 326 (3d Cir. 1977), *appeal after remand*, 594 F.2d 352, *cert. denied*, 444 U.S. 859; *United States v. Stricklin*, *supra*, *United States v. Dunbar*, 611 F.2d 985 (5th Cir. 1980); *United States v. Futch*, 637 F.2d 386 (5th Cir. 1981). In attempting to meet their burden of demonstrating a *prima facia* showing of double jeopardy the Petitioners were entitled to resort to records beyond the indictment *Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962), including parole evidence concerning the subject matter of the former conviction. *Russell v. United States*, 341 F.2d 379 (1st Cir. 1965); *Robinson v. United States*, *supra*. The testimony of the prosecutors from the Southern District of Florida and the District of Maine, supporting in detail the offer of proof that the single conspiracy was intentionally bifurcated in diverse venues was

essential parole evidence. Keeping it from reach denied petitioners' fundamental due process: the opportunity to be heard.

At the very least, therefore, these proceedings should be remanded for the evidentiary hearing requested.

The evil which has been condoned by the decision below is plain. The Petitioners seek no more than fundamental fairness in the application of the mandate of this Court in its interpretation of the Fifth Amendment as this Court itself would render. No less is expected within the federal criminal process. Because of the error as outlined above and the reasons for granting this writ, this petition is deserving of review by this Court.

CONCLUSION

For each and all of the foregoing reasons, it is respectfully submitted that a writ of certiorari should be granted by this Court.

Respectfully submitted,

MELVYN KESSLER, Esquire
and
ARTHUR W. TIFFORD, Esquire
Co-Counsel for Petitioners
1531 N.W. 15 Street Road
Miami, Florida 33125
305-324-4104

By Melvyn Kessler
MELVYN KESSLER

Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Nos. 81-1703 through 81-1711

UNITED STATES OF AMERICA,
Appellee,

v.

MICHAEL BOOTH, a/k/a Dennis Allen Harper,
LARRY JOSEPH LANCELOTTI, a/k/a Mark J. Garvey,
GREGORY LEE LANCELOTTI, a/k/a John Bunyan,
IRVING F. IMOBERSTAG, JACOB SHNURMAN,
a/k/a William L. Stanley, BRADFORD ELDO RUSH,
RANDALL COLLINS,
a/k/a James Lawrence, JEFFREY ALLEN BROWN,
a/k/a John Albert Black, and ROBERT LAWLER,
a/k/a Robert T. Jefferies,
Defendants, Appellants.

APPEALS FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[HON. EDWARD T. GIGNOUX, *U.S. District Judge*]

Before
COFFIN, *Chief Judge,*
TIMBERS, *Circuit Judge,**
BREYER, *Circuit Judge.*

---

*Of the Second Circuit, by designation.

Arthur W. Tifford, for appellant Booth.

Jay P. McCloskey, Assitant United States Attorney, with whom Richard S. Cohen, United States Attorney, was on brief, for appellee.

March 19, 1982

TIMBERS, *Circuit Judge*. On this appeal from an order entered in the District of Maine, Edward T. Gignoux, *Chief Judge*, the principal question presented is whether the district court correctly denied appellants' motions to dismiss

the conspiracy count of an indictment as to them on the ground of double jeopardy. We hold that it did. We affirm.[1]

---

[1]Other subordinate questions are presented and discussed under sections III and IV of this opinion.

In addition to appellant Booth, the other eight appellants named in the caption of this opinion also have appealed from the order denying the motion to dismiss the conspiracy count. In the interest of brevity, we shall refer in this opinion only to the appeal of appellant Booth. He is the only appellant who filed a brief and who appeared by counsel in our Court. Our disposition of Booth's appeal, however, applies likewise to the appeals of the other eight named appellants.

We assume familiarity with our opinion filed today in the companion case of *United States v. Middleton*, No. 81-1712, ___ F.2d___ (1st Cir. 1982), where we affirmed the judgment entered by Judge Gignoux dismissing on the ground of double jeopardy the substantive count of the instant indictment (Count II) as against defendant Middleton, the conspiracy count (Count I) having been dismissed by Judge Gignoux as against defendant Middleton with the acquiescence of the government.

I.

On November 9, 1979, appellant Booth and eighteen others were indicted in the Southern District of Florida on six counts which charged a marijuana smuggling operation. Count I, the count pertinent to this appeal, charged Booth, from some time prior to June 1973 to the date of the filing of the indictment, with conspiring to possess marijuana with intent to distribute it, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (1976).

On October 20, 1980, Maine state police officers arrested Booth on Whitmore Neck, Deer Isle, Maine, and seized twenty-five tons of marijuana nearby. On October 29, 1980, Booth and twenty-three others were indicted in the District of Maine on charges of conspiring to possess marijuana with intent to distribute it, in violation of 21 U.S.C. §§ 841(b)(6) and 846 (1976) (Count I), and on charges of possession of marijuana with intent to distribute it, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(6) (1976) (Count II). The Maine indictment charged a conspiracy from on or about March 19, 1980 to October 20, 1980.

On November 24, 1980, a superseding indictment was returned in Florida. Count I remained the same, but the time of the continuing criminal enterprise charged in Count VI was extended to November 24, 1980. After a jury trial which began April 28, 1981, Booth was convicted on June 19, 1981 of the conspiracy charged in Count I of the Florida indictment.

On July 14, 1981, Booth moved to dismiss Count I of the Maine indictment on the ground of double jeopardy. On September 11, 1981, Judge Gignoux denied this

motion from the bench in a reasoned opinion.[2] From the order entered on the opinion of Judge Gignoux, appellants have taken the instant appeal.

The appeal is properly before us at this time. A pretrial order denying a motion to dismiss an indictment on the ground of double jeopardy is appealable as a final order under 28 U.S.C. §1291 (1976). *Abney v. United States*, 431 U.S. 651, 659 (1977).

II.

In *Brown v. Ohio*, 432 U.S 161, 166 (1977), the Supreme Court reaffirmed the use of the "same evidence" test previously articulated in *Blockburger v. United States*, 284 U.S 299, 304 (1932), to determine whether two offenses are the "same offense" for double jeopardy purposes. As the Fifth Circuit explained in *United States v. Marable*, 578 F.2d 151, 153 (5th Cir. 1978), the test is "whether proof of the matter set out in a second indictment is admissible as evidence under the first indictment and, if it is, whether a conviction could have been properly sustained on such evidence."

The same evidence test has been applied somewhat differently in conspiracy cases because of the possibility that the government literally could comply with it while actually carving up a single conspiracy to commit several crimes into separate prosecutions. We have indicated five factors to be considered in deciding whether

[2]Judge Gignoux also denied appellants' motions to dismiss the substantive count (Count II). That count is not before us on this appeal, since the order to the extent that it denied the motion to dismiss Count II is not appealable.

two conspiracies charged actually are the same: (1) the time during which the activities occurred; (2) the persons involved in the conspiracies; (3) the places involved; (4) whether the same evidence was used to prove the two conspiracies; and (5) whether the same statutory provision was involved in both conspiracies. *United States v. Chagra*, 653 F.2d 26, 29 (1st Cir. 1981), *cert. denied*, ____ U.S. ____ (1982), 50 U.S.L.W. 3567 (U.S. Jan. 18, 1982).[3]

Applying these factors here, we hold that Judge Gignoux properly denied the motions to dismiss the conspiracy count of the indictment. First, the time periods in the two indictments are completely different. The Florida indictment charged a conspiracy from some time prior to June 1973 to November 9, 1979. The Maine indictment charges a conspiracy from on or about March 19, 1980 to October 20, 1980.

Second, of the twenty-four defendants charged in the Maine indictment and the nineteen defendants charged in the Florida indictment, only ten defendants are common to both. Thus the persons involved in the two conspiracies are substantially different. *See United States v. DeFillipo*, 590 F.2d 1228, 1234 & n.7 (2d Cir.) (no double jeopardy

---

[3]The Fifth Circuit, in *United States v. Marable*, *supra*, 578 F.2d at 154, has adopted a substantially similar test:

> "Our examination of the record focuses upon these elements: (1) time, (2) persons acting as coconspirators, (3) the statutory offenses charged in the indictments, (4) the overt acts charged by the government or any other description of the offense charged which indicates the nature and scope of the activity which the government sought to punish in each case, and (5) places where the events alleged as part of the conspiracy took place."

problem when, in a case where one indictment charged seven persons and the other six, four overlapped), *cert. denied*, 442 U.S. 920 (1979); *United States v. Martinez*, 562 F.2d 633, 638 (10th Cir. 1977).

Third, the places where the events charged as part of the two conspiracies took place are entirely different. We find too attenuated appellants' claim that the Florida conspiracy encompassed the Maine conspiracy because the Florida indictment charged a conspiracy in the Southern District of Florida "and elsewhere." In *United States v. Chagra, supra*, we rejected a similar claim where the earlier indictment charged conduct in Texas and in "divers other places to the grand jurors unknown." 653 F.2d at 29. Furthermore, the overt acts charged in the two indictments here involved occurred in different places. Those charged in the Florida indictment occurred in Florida; those charged in the Maine indictment occurred in Maine.

Fourth, although evidence of the Maine conspiracy was introduced at the trial of the Florida conspiracy, this evidence was introduced for the limited purpose of demonstrating intent and knowledge through evidence of subsequent similar acts. The evidence was not introduced to show a continuing conspiracy in Maine. Admission of evidence to show intent is permitted by Rule 404(b) of the Federal Rules of Evidence. *United States v. DeFillipo, supra*, 590 F.2d at 1240.

Fifth, although here the statutory offense charged —conspiracy to possess marijuana with intent to distribute it—is the same in both the Florida and Maine indictments, this in itself is insufficient to support a claim of double jeopardy in view of the other significant

two conspiracies charged actually are the same: (1) the time during which the activities occurred; (2) the persons involved in the conspiracies; (3) the places involved; (4) whether the same evidence was used to prove the two conspiracies; and (5) whether the same statutory provision was involved in both conspiracies. *United States v. Chagra*, 653 F.2d 26, 29 (1st Cir. 1981), *cert. denied*, ____ U.S. ____ (1982), 50 U.S.L.W. 3567 (U.S. Jan. 18, 1982).[3]

Applying these factors here, we hold that Judge Gignoux properly denied the motions to dismiss the conspiracy count of the indictment. First, the time periods in the two indictments are completely different. The Florida indictment charged a conspiracy from some time prior to June 1973 to November 9, 1979. The Maine indictment charges a conspiracy from on or about March 19, 1980 to October 20, 1980.

Second, of the twenty-four defendants charged in the Maine indictment and the nineteen defendants charged in the Florida indictment, only ten defendants are common to both. Thus the persons involved in the two conspiracies are substantially different. *See United States v. DeFillipo*, 590 F.2d 1228, 1234 & n.7 (2d Cir.) (no double jeopardy

---

[3]The Fifth Circuit, in *United States v. Marable*, *supra*, 578 F.2d at 154, has adopted a substantially similar test:

> "Our examination of the record focuses upon these elements: (1) time, (2) persons acting as coconspirators, (3) the statutory offenses charged in the indictments, (4) the overt acts charged by the government or any other description of the offense charged which indicates the nature and scope of the activity which the government sought to punish in each case, and (5) places where the events alleged as part of the conspiracy took place."

problem when, in a case where one indictment charged seven persons and the other six, four overlapped), *cert. denied*, 442 U.S. 920 (1979); *United States v. Martinez*, 562 F.2d 633, 638 (10th Cir. 1977).

Third, the places where the events charged as part of the two conspiracies took place are entirely different. We find too attenuated appellants' claim that the Florida conspiracy encompassed the Maine conspiracy because the Florida indictment charged a conspiracy in the Southern District of Florida "and elsewhere." In *United States v. Chagra*, *supra*, we rejected a similar claim where the earlier indictment charged conduct in Texas and in "divers other places to the grand jurors unknown." 653 F.2d at 29. Furthermore, the overt acts charged in the two indictments here involved occurred in different places. Those charged in the Florida indictment occurred in Florida; those charged in the Maine indictment occurred in Maine.

Fourth, although evidence of the Maine conspiracy was introduced at the trial of the Florida conspiracy, this evidence was introduced for the limited purpose of demonstrating intent and knowledge through evidence of subsequent similar acts. The evidence was not introduced to show a continuing conspiracy in Maine. Admission of evidence to show intent is permitted by Rule 404(b) of the Federal Rules of Evidence. *United States v. DeFillipo*, *supra*, 590 F.2d at 1240.

Fifth, although here the statutory offense charged —conspiracy to possess marijuana with intent to distribute it—is the same in both the Florida and Maine indictments, this in itself is insufficient to support a claim of double jeopardy in view of the other significant

differences referred to above. *United States v. Chagra*, *supra*, 653 F.2d at 29 ("a claim of double jeopardy ordinarily could not be sustained even if the offenses charged in the two indictments had been the same"); *United States v. Johnson*, 612 F.2d 843, 846-47 (4th Cir. 1979).

We hold that Judge Gignoux properly denied the motions to dismiss the conspiracy count of the indictment on the ground of double jeopardy.

III.

Booth further argues that Count I should have been dismissed on the ground of due process, citing the so-called *Petite* policy which was first stated in *Petite v. United States*, 361 U.S. 529 (1960) (per curiam). In that case the government's motion for an order vacating a judgment of conviction was granted on the ground that it was a federal policy "that several offenses arising out of a single transaction should be alleged and tried together and should not be made the basis of multiple prosecutions." The government represented that the policy was dictated by considerations of fairness to defendants and of efficient and orderly law enforcement. *Id.* at 530.

Booth's reliance on that doctrine here is misplaced because the doctrine is one of federal prosecutorial policy, not a matter of constitutional law. Although the Court in *Petite* stated that it was not reaching any due process or double jeopardy issues, 361 U.S. at 530, later in *Rinaldi v. United States*, 434 U.S. 22, 29 (1977) (per curiam), the Court held that the part of the *Petite* policy which precludes federal prosecution following a state prosecution for the same crime was "not

constitutionally mandated". We believe that this holding on an analogous aspect of the *Petite* policy forecloses Booth's due process claim here. The *Petite* policy and cases construing it stand only for the proposition that the government's motion to dismiss should be granted when it discovers that it is conducting separate prosecutions for the same offense. The doctrine does not create a corresponding right in the accused. *United States v. McInnis*, 601 F.2d 1319, 1323 (5th Cir. 1979), *cert. denied*, 445 U.S. 962 (1980).

We hold that Booth's argument that fundamental fairness required dismissal of Count I is unsupported and without merit.

IV.

Booth also contends that he was entitled to an evidentiary hearing to determine whether the offenses charged in the two indictments were the same. A defendant claiming double jeopardy has the burden of presenting evidence to establish a prima facie nonfrivolous double jeopardy claim. Once such claim is established, the burden shifts to the government to prove by a preponderance of the evidence that the indictments charge separate offenses. *United States v. Futch*, 637 F.2d 386, 389 (5th Cir. 1981).

The record here shows that the hearing on Booth's motion to dismiss the conspiracy count was a sufficient evidentiary hearing on his double jeopardy claim. We are satisfied that no further relevant information could have been presented. Furthermore, as in *Chagra*, Booth did not establish a prima facie claim of double jeopardy sufficient to shift the burden of proof to the government.

We hold that Judge Gignoux correctly denied appellants' motions to dismiss Count I of the indictment.

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1705.

UNITED STATES OF AMERICA,
Appellee,

v.

MICHAEL BOOTH, a/k/a
DENNIS ALLEN HARPER,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Tifford and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1707.

UNITED STATES OF AMERICA,
Appellee,

v.

JACOB SHNURMAN, a/k/a
WILLIAM L. STANDLEY,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Kutmus, McCloskey and Tifford]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1706.

UNITED STATES OF AMERICA,
Appellee,

v.

IRVING F. IMOBERSTAG,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Dasher, Tifford, and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1708.

UNITED STATES OF AMERICA,
Appellee,

v.

BRADFORD ELDO RUSH,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Golembe, Tifford and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1709.

UNITED STATES OF AMERICA,
Appellee,

v.

RANDALL COLLINS, a/k/a
JAMES LAWRENCE,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Barrett, Tifford and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1711.

UNITED STATES OF AMERICA,
Appellee,

v.

ROBERT LAWLER, a/k/a
ROBERT T. JEFFRIES,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Booth, Tifford and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1710.

UNITED STATES OF AMERICA,
Appellee,

v.

JEFFREY ALLEN BROWN,
a/k/a JOHN ALBERT BLACK,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Tifford, Sheehan and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1704.

UNITED STATES OF AMERICA,
Appellee,

v.

GREGORY LEE LANCELOTTI, a/k/a
JOHN BUNYAN,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Hatfield, Tifford and McCloskey]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 81-1703.

UNITED STATES OF AMERICA,
Appellee,

v.

LARRY JOSEPH LANCELOTTI, a/k/a
MARK J. GARVEY,
Defendant, Appellant.

JUDGMENT

Entered: March 19, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Maine, and was argued by counsel for appellee, appellant relying on argument and brief in 81-1705.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Hatfield, Tifford and McCloskey]

APPENDIX C

Library References

Drugs and Narcotics —47. C.J.S. Drugs and Narcotics §§ 105 to 107.

Code of Federal Regulations

Identification requirements, see 21 CFR 1310.01 et seq.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4), (5), and (6) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Pub. L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265.

APPENDIX D

§ 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.

APPENDIX E

[FILED NOV. 9, 1979]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NO. 79-379 CR-WMH
18 USC 2
21 USC 841(a)(1)
M/S $15,000 — 5 yrs. plus
2 yr. min. spec. parole term

21 USC 846
M/S $15,000 — 5 yrs. plus
2 yr. min. spec. parole term
21 USC 848
M/S $100,000 — life
10 yr. min.
21 USC 952
M/S $15,000 — 5 yrs. plus
2 yr. min. spec. parole term
21 USC 960
21 USC 963
M/S $15,000 — 5 yrs. plus
2 yr. min. spec. parole term

UNITED STATES OF AMERICA
v.
KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,

CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

INDICTMENT

COUNT I

From an unknown time prior to June, 1973, continuing up to and including the date of the filing of this indictment, in the Southern District of Florida, and elsewhere,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,

ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did wilfully, knowingly, and unlawfully, combine, conspire, confederate, and agree with each other and with Carl Delbert Swanson, and diverse other persons known and unknown to the Grand Jury, to commit offenses against the United States, to-wit: to violate Section 841(a)(1) of Title 21, United States Code.

It was a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally possess with intent to distribute and would distribute a controlled substance, to-wit: marijuana, a Schedule I controlled substance.

It was a further part of the conspiracy that in order for the defendants and co-conspirators to carry out the objectives of the conspiracy and ensure the success of their unlawful venture to distribute marijuana for profit, the conspirators organized themselves and used the cover of an organization known as the Coptic Church, Zion Coptic Church, and Ethiopian Zion Coptic Church; purchased property, motor vehicles, and sea-going vessels; and formed corporations with the members of the conspiracy performing different functions and

operating at different levels of responsibility. The three persons heading the organization were KEITH GORDON, a/k/a Niah; THOMAS FRANCIS REILLY, JR., a/k/a Brother Louv, a/k/a Brother Tommy, a/k/a Ronald Jeffrey Sims, a/k/a Brother Ron; and CLIFTON RAY MIDDLETON, a/k/a Peter Raymond Sheets, a/k/a Ernie; who directed and supervised, managed, and controlled the importation, storage, and distribution of marijuana and the related activities of its members.

It was a further part of the conspiracy that the defendants and co-conspirators would utilize the telephone, an instrumentality of interstate and foreign commerce, to facilitate the importation into and the distribution within the United States, of marijuana.

It was a further part of the conspiracy that the defendants would purchase property for their own use and for the storage of the marijuana.

OVERT ACTS

In furtherance of said conspiracy and to effect and achieve the objects thereof, the defendants and co-conspirators did commit, among others, the following overt acts:

1. Between the approximate dates of June, 1973, and May, 1976, THOMAS FRANCIS REILLY, JR., CLIFTON RAY MIDDLETON, and another purchased property at Dunnellon, Florida, using the fictitious names of Ronald J. Sims, Peter Sheets, and Alan Meyerson.

2. In or about the month of July, 1974, CLIFTON RAY MIDDLETON, Carl Delbert Swanson, and other

co-conspirator members of the Zion Coptic Church purchased the motor vessel known as "RUGGANTINO", for the purpose of facilitating the exportation, importation, the possession, and the distribution of marijuana.

3. On a date prior to January, 1976, a co-conspirator member of the Zion Coptic Church, using the name Peter Sheets, purchased a dwelling located at 43 Star Island, Miami Beach, Florida.

4. In or about the month of April, 1975, individuals known as Peter Sheets and Thomas Dakin incorporated the Zion Coptic Church at 6724 S.W. 12 Street, Miami, Florida.

5. In or about the month of April, 1975, an individual known as Peter Sheets executed corporate papers for the Zion Coptic Church with the fictitious names of Ronald J. Sims, Thomas Dakin, and Peter Sheets as corporate officers.

6. In or about the month of June, 1975, an individual known as Carl Delbert Swanson executed Internal Revenue Service papers for tax exemptions for the Zion Coptic Church, 6724 S.W. 12 Street, Miami, Florida, using the fictitious names of Ronald Sims, Thomas Dakin, and Peter Sheets as corporate officers.

7. In or about the calendar year of 1975, the exact date of which is unknown, CLIFTON RAY MIDDLETON, a/k/a Peter Raymond Sheets, a/k/a Ernie, and other co-conspirator members of the Zion Coptic Church purchased the M/V "STARQUEST" for approximately $175,000.00; which vessel later became known as "PETER'S BOAT".

8. On or about May 19, 1975, an individual known as P. James McFarland purchased a 1975 Ford Station Wagon.

9. In or about the calendar year of 1975, the exact date of which is unknown, CLIFTON RAY MIDDLETON, a/k/a Peter Raymond Sheets, a/k/a Ernie, gave personal identification papers of one Robert Frank DeMarco to Kenneth Dean.

10. In or about the month of February, 1975, CLIFTON RAY MIDDLETON obtained a Florida driver's license in the fictitious name of Peter Raymond Sheets.

11. In or about the month of August, 1975, BRADFORD ELDO RUSH obtained a Florida driver's license in the fictitious name of Thomas Barton Dakin.

12. In or about the month of September, 1976, IRVING IMOBERSTAG obtained a Florida driver's license in the fictitious name of Peter James McFarland.

13. In or about the month of November, 1976, Kenneth Dean fraudulently obtained a Florida driver's license in the name of Robert Frank DeMarco.

14. On or about November 7, 1975, MICHAEL BOOTH, JEFFREY BROWN, ROBERT LAWLER, BRADFORD ELDO RUSH, a/k/a Thomas Barton Dakin, and WILLIAM REID, were on "PETER'S BOAT" off Fort Lauderdale, Florida, with marijuana residue on board.

15. On or about January 16, 1976, individuals known as Peter Sheets and George Bennington opened

a commercial bank account for the Zion Coptic Church, Route 4, Box 193, Dunnellon, Florida.

16. Between 1976 and 1977, the exact dates of which are unknown, Kenneth Dean and other members of the Zion Coptic Church brought into Citrus County, Florida, on approximately five different occasions, multi-tons of marijuana which they unloaded from motor vessels or sailing vessels.

17. On or about April 9, 1976, BRADFORD ELDO RUSH, a/k/a Thomas Barton Dakin, MICHAEL BOOTH, JEFFREY BROWN, WILLIAM REID, and SHELDON WOODWARD were on the M/V "PETER'S BOAT" which had the M/V "ZION" in tow in Jamaican waters with marijuana on board.

18. On or about September 21, 1976, CLIFTON RAY MIDDLETON using the fictitious name of Peter Sheets and other co-conspirator members of the Zion Coptic Church negotiated to purchase the M/V "FOUR SEASONS", for approximately $225,000.00, which vessel later became the "OUR SEAS".

19. In or about the month of September, 1976, CLIFTON RAY MIDDLETON and Carl Delbert Swanson, members of the Zion Coptic Church, set up the corporation, South Seas Charter, Inc., and used it to purchase the M/V "FOUR SEASONS", later known as "OUR SEAS" which was used for transporting marijuana.

20. On or about February 4, 1977, KEITH GORDON met with Lt. David Hall and Lt. (jg) Paul Aarons, Jamaican Coast Guard, wherein KEITH GORDON requested official

information as to Jamaican Coast Guard and Jamaican Defense Force movements and whereabouts.

21. On or about February 4, 1977, KEITH GORDON gave to Lt. David Hall and Lt. (jg) Paul Aarons $200.00 (Jamaican currency) as first payment for information as to Jamaican Coast Guard and Defense Force movements.

22. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Lt. David Hall and Lt. (jg) Paul Aarons in Jamaica to further discuss the exchange of information for money.

23. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., gave to Lt. David Hall and Lt. (jg) Paul Aarons $2,000.00 (Jamaican currency) as further payment for the anticipated information on Jamaican Coast Guard and Defense Force movements.

24. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., discussed with Lt. David Hall and Lt. (jg) Paul Aarons the release by the Jamaican authorities of the M/V "ERIN" which had been seized by Jamaican authorities with twenty (20) tons of marijuana on board.

25. On or about February 10, 1977, KEITH GORDON received from Lt. David Hall certain cleared police information in accordance with the agreement made on February 4, 1977.

26. In or about the month of March, 1977, MICHAEL BOOTH, a member of the Zion Coptic Church,

and another were cultivating approximately two (2) acres of marijuana in Monroe County, Florida.

27. On or about June 19, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., negotiated with Peter Hill to ship marijuana concealed in a fire truck from Jamaica, W.I., into the United States.

28. In or about the month of July, 1977, the defendants through WILLIAM REID and ROBERT LAWLER possessed with intent to distribute approximately 1,100 pounds of marijuana in Mercer County, New Jersey.

29. In or about the month of August, 1977, KEITH GORDON provided approximately 1,500 pounds of marijuana to be concealed within the water tanks of a fire truck for the purpose of shipment to the United States from Jamaica, W.I.

30. In or about the month of September, 1977, a Wayne school bus was purchased in a fictitious name used by the defendant JACOB SHNURMAN.

31. On or about November 28, 1977, IRVING IMOBERSTAG, a/k/a Peter James McFarland, GREGORY LANCELOTTI, LARRY LANCELOTTI, ANNE MARY MORRISON, WILLIAM REID, Carl Delbert Swanson, and other members of the Zion Coptic Church, were in possession of approximately fourteen and one-half tons (14.5) tons of marijuana.

32. In the latter part of 1977, or in the early part of 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Peter Hill at 43 Star Island,

Miami Beach, Florida, to discuss the loss of the 1,500 pounds of marijuana concealed within a fire truck and to negotiate the purchase of an additional 27,000 pounds of marijuana.

33. In the approximate time period of January, 1978, an individual by the name of Melvin Emmanuel, and other co-conspirator members of the Zion Coptic Church set up Unity Transport and Equipment Corp., which was used to purchase an Allane bus subsequently to be used for the transportation of marijuana.

34. On or about February 2, 1978, MICHAEL CULLISON, REGINALD TONEY, and others brought the motor vessel "OUR SEAS" into the Crystal River Barge Canal area, Citrus County, Florida, with approximately nineteen (19) tons of marijuana on board.

35. On a unknown date or dates prior to February 4, 1978, KEITH GORDON, THOMAS FRANCIS REILLY, JR., JACOB SHNURMAN, MICHAEL BOOTH, JEFFREY BROWN, STEPHEN BURNS, RANDALL COLLINS, MICHAEL CULLISON, GREGORY LANCELOTTI, LARRY LANCELOTTI, ROBERT LAWLER, ANNE MARY MORRISON, WILLIAM REID, BRADFORD ELDO RUSH, REGINALD TONEY, SHELDON WOODWARD, and Carl Delbert Swanson, traveled to the area of Citrus County, Florida, to facilitate the possession and to actually possess, and to facilitate the transportation and distribution of approximately nineteen (19) tons of marijuana.

36. On or about March 2, 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., and other co-conspirator members of the Zion Coptic Church at

43 Star Island, Miami Beach, Florida, met an individual through Peter Hill, for the purpose of purchasing marijuana from the members of the Zion Coptic Church.

37. Between July, 1978, and August, 1978, the defendants through KEITH GORDON, THOMAS FRANCIS REILLY, JR., CLIFTON RAY MIDDLETON and Carl Delbert Swanson negotiated with Lee A. Dunn to distribute approximately three hundred forty-five (345) pounds of marijuana.

38. On or about August 1, 1978, the defendants through STEPHEN BURNS, a/k/a Nate, distributed to Lee A. Dunn approximately three hundred forty-five (345) pounds of marijuana.

39. In or about the month of August, 1978, JEFFREY BROWN, RANDALL COLLINS, MICHAEL CULLISON, and SHELDON WOODWARD were on board the M/V "RUGGANTINO", wherein marijuana residue was found when it was stopped by the United States Coast Guard.

40. On or about October 2, 1978, TONY DARWIN purchased a 1978 Cessna 404 Titan Ambassador with tail number N88696.

41. On or about September 11, 1979, TONY DARWIN rented hangar number 26 at Sunny South Services, located at the Fort Lauderdale International Airport, Fort Lauderdale, Florida.

42. On or about September 30, 1979, Carl Delbert Swanson was in an airplane which contained

approximately 2,000 pounds marijuana in Fort Lauderdale, Florida.

All in violation of Title 21, United States Code, Section 846.

COUNT II

From an unknown time prior to June, 1973, up to and including the date of the filing of this indictment, in the Southern District of Florida and elsewhere, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,

IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

did wilfully, knowingly, and unlawfully, combine, conspire, confederate and agree with each other and with Carl Delbert Swanson and diverse others persons known and unknown to the Grand Jury, to commit offenses against the United States, to-wit: to violate Sections 952 and 960 of Title 21, United States Code.

It was a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally import into the United States from a territory outside thereof a controlled substance, to-wit: multi-tons of marijuana, a Schedule I controlled substance.

OVERT ACTS

In furtherance of said conspiracy and to effect and achieve the objects thereof, the defendants and

co-conspirators did commit, among others, the following overt acts:

1. On or about February 4, 1977, KEITH GORDON met with Lt. David Hall and Lt. (jg) Paul Aarons, Jamaican Coast Guard, wherein KEITH GORDON requested official information as to Jamaican Coast Guard and Defense Force movements and whereabouts.

2. On or about February 4, 1977, KEITH GORDON gave Lt. David Hall and Lt. (jg) Paul Aarons $200.00 (Jamaican currency) as first payment for information as to Jamaican Coast Guard and Defense Force movements.

3. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Lt. David Hall and Lt. (jg) Paul Aarons in Jamaica to further discuss the exchange of information for money.

4. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., gave to Lt. David Hall and Lt. (jg) Paul Aarons $2,000.00 (Jamaican currency) as further payment for the anticipated information on Jamaican Coast Guard and Defense Force movements.

5. On or about June 19, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., negotiated with Peter Hill to ship marijuana concealed in a fire truck from Jamaica, W.I., into the United States.

6. In or about the month of August, 1977, KEITH GORDON provided approximately 1,500 pounds of marijuana to be concealed within the water tanks of a

fire truck for the purpose of shipment to the United States from Jamaica, W.I.

7. On or about November 28, 1977, IRVING IMOBERSTAG, a/k/a Peter James McFarland, GREGORY LANCELOTTI, LARRY LANCELOTTI, ANNE MARY MORRISON, WILLIAM REID, Carl Delbert Swanson, and other members of the Zion Coptic Church were in possession of approximately fourteen and one-half (14.5) tons of marijuana.

8. In the latter part of 1977, or the early part of 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Peter Hill at 43 Star Island, Miami Beach, Florida, to discuss the loss of the 1,500 pounds of marijuana concealed within a fire truck and to negotiate the purchase of an additional 27,000 pounds of marijuana.

9. On an unknown date or dates prior to February 4, 1978, KEITH GORDON, THOMAS FRANCIS REILLY, JR., MICHAEL BOOTH, JEFFREY BROWN, STEPHEN BURNS, RANDALL COLLINS, MICHAEL CULLISON, GREGORY LANCELOTTI, LARRY LANCELOTTI, ROBERT LAWLER, ANNE MARY MORRISON, WILLIAM REID, BRADFORD ELDO RUSH, JACOB SHNURMAN, REGINALD TONEY, SHELDON WOODWARD, and Carl Delbert Swanson traveled to the area of Crystal River, Florida, to facilitate the possession and to actually possess, and to facilitate the transportation and distribution of approximately nineteen (19) tons of marijuana.

10. On or about October 2, 1978, TONY DARWIN purchased a 1978 Cessna 404 Titan Ambassador with tail number N88696.

11. On or about September 11, 1979, TONY DARWIN rented hangar number 26 at Sunny South Services, located at the Fort Lauderdale International Airport.

12. On or about September 13, 1979, Carl Delbert Swanson was at the home of TONY DARWIN in Fort Lauderdale, Florida.

13. On or about September 30, 1979, Carl Delbert Swanson was in an airplane which contained approximately 2,000 pounds of marijuana in Fort Lauderdale, Florida.

All in violation of Title 21, United States Code, Section 963.

COUNT III

On or about August 1, 1978, in the Southern District of Florida and elsewhere,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,

STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, and others known and unknown to the Grand Jury, did knowingly and intentionally distribute a Schedule I controlled substance, to-wit: approximately three hundred forty-five (345) pounds of marijuana, in violation of Title 21, United States Code, Section 841(1); and Title 18, United States Code, Section 2.

COUNT IV

On or about September 30, 1979, in the Southern District of Florida,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,

BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did knowingly and intentionally import into the United States from a territory outside thereof, a controlled substance to-wit: approximately 2,000 pounds of marijuana, a Schedule I controlled substance; in violation of Title 21, United States Code, Sections 952(1) and 960(a)(1).

COUNT V

On or about September 30, 1979, in the Southern District of Florida,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,

STEPHEN BURNS,
a/k/a Nate,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did knowingly and intentionally possess with intent to distribute a controlled substance, to-wit: approximately 2,000 pounds of marijuana, a Schedule I controlled substance; in violation of Title 21, United States Code, Section 841(a)(1).

COUNT VI

From an unknown time prior to April, 1974, continuing up to and including the date of the filing of this indictment, in the Southern District of Florida and elsewhere,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Brother Louv,
a/k/a Brother Tommy,
a/k/a Ronald Jeffrey Sims,
a/k/a Brother Ron,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,

defendants herein, did unlawfully, wilfully, knowingly, and intentionally engage in a continuing criminal enterprise in that they did violate Title 21, United States Code, Sections 841(a)(1), 952, and 963, which violations were part of a continuing series of violations of said statutes undertaken by each defendant in concert with at least five other persons, with respect to whom the defendants occupied a position of organizer, supervisor, and manager, and from which continuing series of violations the defendants obtained substantial income and resources to which the United States is entitled to forfeiture, including all profits obtained by the defendants in such enterprise, and any of the interests, property

and contractual rights of any kind affording a source of influence over such enterprises; in violation of Title 21, United States Code, Section 848.

A TRUE BILL

/s/ [Copy Illegible]
FOREPERSON

/s/ J. V. ESKENAZI
UNITED STATES ATTORNEY

/s/ BARBARA D. SCHWARTZ
ASSISTANT
UNITED STATES ATTORNEY

APPENDIX F

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

CR. NO. 80-10075 B
(21 U.S.C. § 841(a)(1);
21 U.S.C. § 846; 18 U.S.C.
§ 2274)

UNITED STATES OF AMERICA
v.
CLIFTON RAY MIDDLETON
a/k/a Robert Michael Cohen
DONALD NIXON RUSH
LARRY JOSEPH LANCELOTTI
a/k/a Mark J. Garvey
GREGORY LEE LANCELOTTI
a/k/a John Bunyan
CHARLES L. LEATON
a/k/a David Wilson
HARRY J. SHNURMAN
MICHAEL LEE RISOLVATO
ROBERT MICHAEL COHEN
a/k/a Wayne Gradowski
THOMAS G. CONVERSE
a/k/a Thomas G. Coombs
DAVID EARL JOHNSON
a/k/a Eral D. Johnson
MICHAEL BOOTH
a/k/a Dennis Allen Harper
JAMES WILLIAM HANSON
a/k/a James Hawkins
IRVING F. IMOBERSTAG
CARL ERIC OLSEN

JACOB SHNURMAN
a/k/a William L. Standley
JUDITH TRANMER
a/k/a Judith Butman
CHRISTINE NISSENBAUM
DIANA WOODWARD
BRADFORD ELDO RUSH
MICHAEL FRANCIS O'HARA
a/k/a Malcolm Long, Jr.
RANDALL COLLINS
a/k/a James Lawrence
JEFFREY ALLEN BROWN
a/k/a John Albert Black
ROBERT LAWLER
a/k/a Robert T. Jefferies

INDICTMENT

The Grand Jury charges:

COUNT I

Beginning on or about March 19, 1980, and continuing up to and including October 20, 1980, in the District of Maine, the defendants

CLIFTON RAY MIDDLETON
a/k/a Robert Michael Cohen

DONALD NIXON RUSH

LARRY JOSEPH LANCELOTTI
a/k/a Mark J. Garvey

GREGORY LEE LANCELOTTI
a/k/a John Bunyan

CHARLES L. LEATON
a/k/a David Wilson

HARRY J. SHNURMAN

MICHAEL LEE RISOLVATO

ROBERT MICHAEL COHEN
a/k/a Wayne Gradowski

THOMAS G. CONVERSE
a/k/a Thomas G. Coombs

DAVID EARL JOHNSON
a/k/a Eral D. Johnson

MICHAEL BOOTH
a/k/a Dennis Allen Harper

JAMES WILLIAM HANSON
a/k/a James Hawkins

IRVING F. IMOBERSTAG

CARL ERIC OLSEN

JACOB SHNURMAN
a/k/a William L. Standley

JUDITH TRANMER
a/k/a Judith Butman

CHRISTINE NISSENBAUM

DIANA WOODWARD

BRADFORD ELDO RUSH

MICHAEL FRANCIS O'HARA
a/k/a Malcolm Long, Jr.

RANDALL COLLINS
a/k/a James Lawrence

JEFFREY ALLEN BROWN
a/k/a John Albert Black

ROBERT LAWLER
a/k/a Robert T. Jefferies

unlawfully did combine, conspire, confederate, and agree together, and with persons unknown to the Grand Jury, to knowingly and intentionally possess with intent to distribute a quantity of marijuana, a Schedule I Controlled Substance, exceeding 1000 pounds, to wit, approximately 25 tons thereof, in violation of Title 21 United States Code, Section 841;

It was a part of the said conspiracy that the defendants would acquire a shore-front property on the Coast of Maine accessible from the ocean;

It further was a part of the said conspiracy that the defendants would acquire another property in Maine, some distance from said shore-front property, to be used as a staging area for the defendants and vehicles;

It still further was a part of the said conspiracy that the defendants would transport by means of an ocean-going vessel a large quantity of marijuana, well exceeding 1000 pounds, to said shore-front property;

It yet further was a part of the said conspiracy that the defendants would transport said marijuana in various vehicles from said shore-front property to elsewhere in the United States for distribution;

OVERT ACTS

In furtherance of the said conspiracy, and to effect the objects thereof, the following overt acts were committed in the District of Maine:

1. On or about March 19, 1980, defendants purchased a piece of real property on Whitmore Neck in the Oceanville section of Deer Isle, Hancock County, Maine, for approximately $225,000;

2. On or about May 20, 1980, defendants purchased a piece of real property in Stockton Springs, Waldo County, Maine, for approximately $125,000;

3. On or about October 20, 1980, the motor vessel Jubilee, a former fishing vessel approximately 71.6 feet in length, carrying a cargo of approximately 25 tons of marijuana entered the mouth of Southeast Harbor, Deer Isle, Hancock County, Maine;

All in violation of Title 21, United States Code, Sections 846 and 841(b)(6).

COUNT II

On or about October 20, 1980, in the District of Maine, the defendants

CLIFTON RAY MIDDLETON
a/k/a Robert Michael Cohen

DONALD NIXON RUSH

LARRY JOSEPH LANCELOTTI
a/k/a Mark J. Garvey

GREGORY LEE LANCELOTTI
a/k/a John Bunyan

CHARLES L. LEATON
a/k/a David Wilson

HARRY J. SHNURMAN

MICHAEL LEE RISOLVATO

ROBERT MICHAEL COHEN
a/k/a Wayne Gradowski

THOMAS G. CONVERSE
a/k/a Thomas G. Coombs

DAVID EARL JOHNSON
a/k/a Eral D. Johnson

MICHAEL BOOTH
a/k/a Dennis Allen Harper

JAMES WILLIAM HANSON
a/k/a James Hawkins

IRVING F. IMOBERSTAG

CARL ERIC OLSEN

JACOB SHNURMAN
a/k/a William L. Standley

JUDITH TRANMER
a/k/a Judith Butman

CHRISTINE NISSENBAUM

DIANA WOODWARD

BRADFORD ELDO RUSH

MICHAEL FRANCIS O'HARA
a/k/a Malcolm Long, Jr.

RANDALL COLLINS
a/k/a James Lawrence

JEFFREY ALLEN BROWN
a/k/a John Albert Black

ROBERT LAWLER
a/k/a Robert T. Jefferies

unlawfully, knowingly and intentionally did possess with intent to distribute a quantity of marijuana, a Schedule I Controlled Substance, exceeding 1000 pounds, to wit, approximately 25 tons thereof, in violation of Title 21

COUNT II

On or about October 20, 1980, in the District of Maine, the defendants

CLIFTON RAY MIDDLETON
a/k/a Robert Michael Cohen

DONALD NIXON RUSH

LARRY JOSEPH LANCELOTTI
a/k/a Mark J. Garvey

GREGORY LEE LANCELOTTI
a/k/a John Bunyan

CHARLES L. LEATON
a/k/a David Wilson

HARRY J. SHNURMAN

MICHAEL LEE RISOLVATO

ROBERT MICHAEL COHEN
a/k/a Wayne Gradowski

THOMAS G. CONVERSE
a/k/a Thomas G. Coombs

DAVID EARL JOHNSON
a/k/a Eral D. Johnson

MICHAEL BOOTH
a/k/a Dennis Allen Harper

JAMES WILLIAM HANSON
a/k/a James Hawkins

IRVING F. IMOBERSTAG

CARL ERIC OLSEN

JACOB SHNURMAN
a/k/a William L. Standley

JUDITH TRANMER
a/k/a Judith Butman

CHRISTINE NISSENBAUM

DIANA WOODWARD

BRADFORD ELDO RUSH

MICHAEL FRANCIS O'HARA
a/k/a Malcolm Long, Jr.

RANDALL COLLINS
a/k/a James Lawrence

JEFFREY ALLEN BROWN
a/k/a John Albert Black

ROBERT LAWLER
a/k/a Robert T. Jefferies

unlawfully, knowingly and intentionally did possess with intent to distribute a quantity of marijuana, a Schedule I Controlled Substance, exceeding 1000 pounds, to wit, approximately 25 tons thereof, in violation of Title 21

United States Code, Section 841(a)(1) and 841(b)(6), and Title 18, United States Code, Section 2.

COUNT III

On or about October 20, 1980, in the District of Maine, defendants

BRADFORD ELDO RUSH

MICHAEL FRANCIS O'HARA
a/k/a Malcolm Long, Jr.

RANDALL COLLINS
a/k/a James Lawrence

JEFFREY ALLEN BROWN
a/k/a John Albert Black

being the master and person in charge and members of the crew of a foreign private vessel, to wit, the M/V Jubilee, within the territorial waters of the United States, unlawfully and knowingly did permit said vessel to be used as a place of resort for persons, to wit, the said defendants, conspiring with each other and other persons and preparing to commit an offense against the United States, to wit, knowing and intentional possession of marijuana with intent to distribute in violation of Title 21, United States Code, Section 841,

all in violation of Title 18, United States Code, Section 2274.

A TRUE BILL,
/s/ Lillian W. Kusog
FOREMAN (lady)

/s/ [illegible]
UNITED STATES ATTORNEY

Date: 10-29-81

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NO. 79-379-Cr-WMH(s)
18 USC 2
21 USC 841(a)(1)
M/S $15,000 — 5 years plus
2 years min. spec. parole term
21 USC 846
M/S $15,000 — 5 years
21 USC 848
M/S $100,00 — life
10 years min.
21 USC 952
M/S $15,000 — 5 years plus
2 years min. spec. parole term
21 USC 960
21 USC 963
M/S $15,00 — 5 years plus

UNITED STATES OF AMERICA
v.
KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,

MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD

INDICTMENT

The Grand Jury charges that:

COUNT I

From an unknown time prior to June, 1973, continuing up to and including November 9, 1979, in the Southern District of Florida, and elsewhere,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,

JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did wilfully, knowingly, and unlawfully, combine conspire, confederate, and agree with each other and with Carl Swanson, and diverse other persons known and unknown to the Grand Jury, to commit offenses against the United States, to-wit: to violate Section 841(a)(1) of Title 21, United States Code.

It was part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally possess with intent to distribute and would distribute a controlled substance, to-wit: marijuana, a Schedule I controlled substance.

It was a further part of the conspiracy that in order for the defendants and co-conspirators to carry out the objectives of the conspiracy and ensure the success of their unlawful venture to distribute marijuana for profit, the conspirators organized themselves and used the cover of an organization known as the Coptic Church, Zion Coptic Church, and Ethiopian Zion Coptic Church; purchased property, motor vehicles, and sea-going vessels; and formed corporations with the members of the conspiracy performing different functions and operating at different levels of responsibility. The three people heading the organization were KEITH GORDON, a/k/a Niah; THOMAS FRANCIS REILLY, JR., a/k/a Brother Louv, a/k/a Brother Tommy, a/k/a Ronald Jeffrey Sims, a/k/a Brother Ron; and CLIFTON RAY

MIDDLETON, a/k/a Peter Raymond Sheets, a/k/a Ernie; who directed and supervised, managed, and controlled the importation, storage, and distribution of marijuana and the related activities of its members.

It was a further part of the conspiracy that the defendants and co-conspirators would utilize the telephone, an instrumentality of interstate and foreign commerce, to facilitate the importation into and the distribution within the United States, of marijuana.

It was a further part of the conspiracy that the defendants would purchase property for their use and for the storage of the marijuana.

OVERT ACTS

In furtherance of said conspiracy and to effect and achieve the objects thereof, the defendants and co-conspirators did commit, among others, the following overt acts:

1. Between the approximate dates of June, 1973, and May, 1976, THOMAS FRANCIS REILLY, JR., CLIFTON RAY MIDDLETON, and another, purchased property at Dunnellon, Florida, using the fictitious names of Ronald J. Sims, Peter Sheets, and Alan Meyerson.

2. In or about the month of July, 1974, CLIFTON RAY MIDDLETON, Carl Delbert Swanson, and other co-conspirator members of the Zion Coptic Church purchased the motor vessel known as "RUGGANTINO", for the purpose of facilitating the exportation, importation, the possession, and the distribution of marijuana.

3. On a date prior to January, 1976, a co-conspirator member of the Zion Coptic Church, using the name Peter Sheets, purchased a dwelling located at 43 Star Island, Miami Beach, Florida.

4. In or about the month of April, 1975, individuals known as Peter Sheets and Thomas Dakin incorporated the Zion Coptic Church at 6724 S.W. 12 Street, Miami, Florida.

5. In or about the month of April, 1975, an individual known as Peter Sheets executed corporate papers for the Zion Coptic Church with the fictitious names of Ronald J. Sims, Thomas Dakin, and Peter Sheets as corporate officers.

6. In or about the month of June, 1975, an individual known as Carl Delbert Swanson executed Internal Revenue Service papers for tax exemptions for the Zion Coptic Church, 6724 S.W. 12 Street, Miami, Florida, using the fictitious names of Ronald Sims, Thomas Dakin, and Peter Sheets as corporate officers.

7. In or about the calendar year of 1975, the exact date of which is unknown, CLIFTON RAY MIDDLETON, a/k/a Peter Raymond Sheets, a/k/a Ernie, and other co-conspirator members of the Zion Coptic Church purchased the M/V "STARQUEST" for approximately $175,000.00; which vessel later became known as "PETER'S BOAT".

8. On or about May 19, 1975, an individual known as P. James McFarland purchased a 1975 Ford Station Wagon.

9. In or about the month of February, 1975, CLIFTON RAY MIDDLETON obtained a Florida driver's license in the fictitious name of Peter Raymond Sheets.

10. In or about the month of August, 1975, BRADFORD ELDO RUSH obtained a Florida driver's license in the fictitious name of Thomas Barton Dakin.

11. In or about the month of September, 1976, IRVING IMOBERSTAG obtained a Florida driver's license in the fictitious name of Peter James McFarland.

12. On or about November 7, 1975, MICHAEL BOOTH, JEFFREY BROWN, ROBERT LAWLER, BRADFORD ELDO RUSH, a/k/a Thomas Barton Dakin, and WILLIAM REID, were on "PETER'S BOAT" off Fort Lauderdale, Florida, with marijuana residue on board.

13. On or about January 16, 1976, individuals known as Peter Sheets and George Bennington opened a commercial bank account for the Zion Coptic Church, Route 4, Box 193, Dunnellon, Florida.

14. On or about April 9, 1976, BRADFORD ELDO RUSH, a/k/a Thomas Barton Dakin, MICHAEL BOOTH, JEFFREY BROWN, WILLIAM REID, and SHELDON WOODWARD were on the M/V "PETER'S BOAT" which had the M/V "ZION" in tow in Jamaican waters with marijuana on board.

15. On or about September 21, 1976, CLIFTON RAY MIDDLETON used the fictitious name of Peter Sheets and other co-conspirator members of the Zion Coptic Church negotiated to purchase the M/V "FOUR

SEASONS", for approximately $225,000.00, which vessel later became the "OUR SEAS".

16. In or about the month of September, 1976, CLIFTON RAY MIDDLETON and Carl Delbert Swanson, members of the Zion Coptic Church, set up the corporation, South Seas Charter, Inc., and used it to purchase the M/V "FOUR SEASONS", later known as "OUR SEAS" which was used for transporting marijuana.

17. On or about February 4, 1977, KEITH GORDON met with Lt. David Hall and Lt. (jg) Paul Aarons, Jamaican Coast Guard, wherein KEITH GORDON requested official information as to Jamaican Coast Guard and Jamaican Defense Force movements and whereabouts.

18. On or about February 4, 1977, KEITH GORDON gave to Lt. David Hall and Lt. (jg) Paul Aarons $200.00 (Jamaican currency) as first payment for information as to Jamaican Coast Guard and Defense Force movements.

19. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Lt. David Hall and Lt. (jg) Paul Aarons in Jamaica to further discuss the exchange of information for money.

20. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., gave to Lt. David Hall and Lt. (jg) Paul Aarons $2,000.00 (Jamaican currency) as further payment for the anticipated information on Jamaican Coast Guard and Defense Force movements.

21. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., discussed with Lt. David Hall and Lt. (jg) Paul Aarons the release by the Jamaican authorities of the M/V "ERIN" which had been seized by Jamaican authorities with twenty (20) tons of marijuana on board.

22. On or about February 10, 1977, KEITH GORDON received from Lt. David Hall certain cleared police information in accordance with the agreement made on February 4, 1977.

23. On or about June 19, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., negotiated with Peter Hill to ship marijuana concealed in a fire truck from Jamaica, W. I., into the United States.

24. In or about the month of July, 1977, the defendants WILLIAM REID and ROBERT LAWLER possessed with intent to distribute approximately 1,100 pounds of marijuana in Mercer County, New Jersey.

25. In or about the month of August, 1977, KEITH GORDON provided approximately 1,500 pounds of marijuana to be concealed within the water tanks of a fire truck for the purpose of shipment to the United States from Jamaica, W. I.

26. In or about the month of September, 1977, a Wayne school bus was purchased in a fictitious name used by the defendant JACOB SHNURMAN.

27. On or about November 28, 1977, IRVING IMOBERSTAG, a/k/a Peter James McFarland, GREGORY LANCELOTTI, LARRY LANCELOTTI,

ANNE MARY MORRISON, WILLIAM REID, Carl Delbert Swanson, and other members of the Zion Coptic Church, were in possession of approximately fourteen and one-half tons (14.5) tons of marijuana.

28. In the latter part of 1977, or in the early part of 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Peter Hill at 43 Star Island, Miami Beach, Florida, to discuss the loss of the 1,500 pounds of marijuana concealed within a fire truck and to negotiate the purchase of an additional 27,000 pounds of marijuana.

29. In the approximate time period of January, 1978, an individual by the name of Melvin Emmanuel, and other co-conspirator members of the Zion Coptic Church set up Unity Transport and Equipment Corp., which was used to purchase an Allane bus subsequently to be used for the transportation of marijuana.

30. On or about February 2, 1978, MICHAEL CULLISON, REGINALD TONEY, and others brought the motor vessel "OUR SEAS" into the Crystal River Barge Canal area, Citrus County, Florida, with approximately nineteen (19) tons of marijuana on board.

31. On a unknown date or dates prior to February 4, 1978, KEITH GORDON, THOMAS FRANCIS REILLY, JR., JACOB SHNURMAN, NATHAN CHAPMAN, MICHAEL BOOTH, JEFFREY BROWN, RANDALL COLLINS, MICHAEL CULLISON, GREGORY LANCELOTTI, LARRY LANCELOTTI, ROBERT LAWLER, ANNE MARY MORRISON, WILLIAM REID, BRADFORD ELDO RUSH, REGINALD TONEY, SHELDON WOODWARD, and Carl Delbert Swanson,

traveled to the area of Citrus County, Florida, to facilitate the possession and to actually possess, and to facilitate the transportation and distribution of approximately nineteen (19) tons of marijuana.

32. On or about March 2, 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., and other co-conspirator members of the Zion Coptic Church at 43 Star Island, Miami Beach, Florida, met an individual through Peter Hill, for the purpose of purchasing marijuana from the members of the Zion Coptic Church.

33. Between July, 1978, and August, 1978, the defendants through KEITH GORDON, THOMAS FRANCIS REILLY, JR., CLIFTON RAY MIDDLETON and Carl Delbert Swanson negotiated with Lee A. Dunn to distribute approximately three hundred forty-five (345) pounds of marijuana.

34. On or about August 1, 1978, the defendants through NATHAN CHAPMAN, a/k/a Stephen Burns, distributed to Lee A. Dunn approximately three hundred forty-five (345) pounds of marijuana.

35. In or about the month of August, 1978, JEFFREY BROWN, RANDALL COLLINS, MICHAEL CULLISON, and SHELDON WOODWARD were on board the M/V "RUGGANTINO", wherein marijuana residue was found when it was stopped by the United States Coast Guard.

36. On or about October 2, 1978, TONY DARWIN purchased a 1978 Cessna 404 Titan Ambassador with tail number N88696.

37. On or about September 11, 1979, TONY DARWIN rented hangar number 26 at Sunny South Services, located at the Fort Lauderdale International Airport, Fort Lauderdale, Florida.

38. On or about September 30, 1979, Carl Delbert Swanson was in an airplane which contained approximately 2,000 pounds marijuana in Fort Lauderdale, Florida.

All in violation of Title 21, United States Code, Section 846.

COUNT II

From an unknown time prior to June, 1973, up to and including November 9, 1979, in the Southern District of Florida and elsewhere, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,

a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

did wilfully, knowingly, and unlawfully, combine, conspire, confederate and agree with each other and with Carl Delbert Swanson and diverse others persons known and unknown to the Grand Jury, to commit offenses against the United States, to-wit: to violate Sections 952 and 960 of Title 21, United States Code.

It was a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally import into the United States from a territory outside thereof a controlled substance, to-wit: multi-tons of marijuana, a Schedule I controlled substance.

OVERT ACTS

In furtherance of said conspiracy and to effect and achieve the objects thereof, the defendants and co-conspirators did commit, among others, the following overt acts:

1. On or about February 4, 1977, KEITH GORDON met with Lt. David Hall and Lt. (jg) Paul Aarons, Jamaican Coast Guard, wherein KEITH GORDON requested official information as to Jamaican Coast Guard and Defense Force movements and whereabouts.

2. On or about February 4, 1977, KEITH GORDON gave Lt. David Hall and Lt. (jg) Paul Aarons $200.00 (Jamaican currency) as first payment for information as to Jamaican Coast Guard and Defense Force movements.

3. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Lt. David Hall and Lt. (jg) Paul Aarons in Jamaica to further discuss the exchange of information for money.

4. On or about February 4, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., gave to Lt. David Hall and Lt. (jg) Paul Aarons $2,000.00 (Jamaican currency) as further payment for the anticipated information on Jamaican Coast Guard and Defense Force movements.

5. On or about June 19, 1977, KEITH GORDON and THOMAS FRANCIS REILLY, JR., negotiated with Peter Hill to ship marijuana concealed in a fire truck from Jamaica, W. I., into the United States.

6. In or about the month of August, 1977, KEITH GORDON provided approximately 1,500 pounds of marijuana to be concealed within the water tanks of a fire truck for the purpose of shipment to the United States from Jamaica, W. I.

7. On or about November 28, 1977, IRVING IMOBERSTAG, a/k/a Peter James McFarland, GREGORY LANCELOTTI, LARRY LANCELOTTI, ANNE MARY MORRISON, WILLIAM REID, Carl Delbert Swanson, and other members of the Zion Coptic Church were in possession of approximately fourteen and one-half (14.5) tons of marijuana.

8. In the latter part of 1977, or the early part of 1978, KEITH GORDON and THOMAS FRANCIS REILLY, JR., met with Peter Hill at 43 Star Island, Miami Beach, Florida, to discuss the loss of the 1,500 pounds of marijuana concealed within a fire truck and to negotiate the purchase of an additional 27,000 pounds of marijuana.

9. On an unknown date or dates prior to February 4, 1978, KEITH GORDON, THOMAS FRANCIS REILLY, JR., MICHAEL BOOTH, JEFFREY BROWN, NATHAN CHAPMAN, RANDALL COLLINS, MICHAEL CULLISON, GREGORY LANCELOTTI, LARRY LANCELOTTI, ROBERT LAWLER, ANNE MARY MORRISON, WILLIAM REID, BRADFORD ELDO RUSH, JACOB SHNURMAN, REGINALD TONEY, SHELDON WOODWARD, and Carl Delbert Swanson traveled to the area of Crystal River, Florida, to facilitate the possession and to actually possess, and to facilitate the transportation and distribution of approximately nineteen (19) tons of marijuana.

10. On or about October 2, 1978, TONY DARWIN purchased a 1978 Cessna 404 Titan Ambassador with tail number N88696.

11. On or about September 11, 1979, TONY DARWIN rented hangar number 26 at Sunny South Services, located at the Fort Lauderdale International Airport.

12. On or about September 13, 1979, Carl Delbert Swanson was at the home of TONY DARWIN in Fort Lauderdale, Florida.

13. On or about September 30, 1979, Carl Delbert Swanson was in an airplane which contained approximately 2,000 pounds of marijuana in Fort Lauderdale, Florida.

All in violation of Title 21, United States Code, Section 963.

COUNT III

On or about August 1, 1978, in the Southern District of Florida and elsewhere, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,

JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, and others known and unknown to the Grand Jury, did knowingly and intentionally distribute a Schedule I controlled substance, to-wit: approximately three hundred forty-five (345) pounds of marijuana, in violation of Title 21, United States Code, Section 841(1); and Title 18, United States Code, Section 2.

COUNT IV

On or about September 30, 1979, in the Southern District of Florida, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,
a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMGBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,

a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did knowingly and intentionally import into the United States from a place outside thereof, a controlled substance to-wit: approximately 2,000 pounds of marijuana, a Schedule I controlled substance; in violation of Title 21, United States Code, Sections 952(1) and 960(a)(1) and Title 18, United States Code, Section 2.

COUNT V

On or about September 30, 1979, in the Southern District of Florida, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,
MICHAEL BOOTH,
JEFFREY BROWN,
NATHAN CHAPMAN,
a/k/a Stephen Burns,
RANDALL COLLINS,
MICHAEL CULLISON,
TONY DARWIN,
a/k/a George Sheffler,
a/k/a Tom T. Saunders,

a/k/a Cash Green,
a/k/a Sam Rogers,
IRVING IMOBERSTAG,
a/k/a Peter James McFarland,
GREGORY LANCELOTTI,
LARRY LANCELOTTI,
a/k/a Ray J. Smith,
ROBERT LAWLER,
ANNE MARY MORRISON,
a/k/a Ann Reeves,
WILLIAM REID,
BRADFORD ELDO RUSH,
a/k/a Thomas Barton Dakin,
JACOB SHNURMAN,
a/k/a George Russell Bennington,
a/k/a Melvin Isaac Emmanuel,
REGINALD TONEY,
and
SHELDON WOODWARD,

defendants herein, did knowingly and intentionally possess with intent to distribute a controlled substance, to-wit: approximately 2,000 pounds of marijuana, a Schedule I controlled substance; in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT VI

From an unknown time prior to April, 1974, continuing up to and including the date of the filing of this indictment, in the Southern District of Florida and elsewhere, the defendants,

KEITH GORDON,
a/k/a Niah,
THOMAS FRANCIS REILLY, JR.,
a/k/a Ronald Jeffrey Sims,
CLIFTON RAY MIDDLETON,
a/k/a Peter Raymond Sheets,
a/k/a Ernie,

defendants herein, did unlawfully, wilfully, knowingly, and intentionally engage in a continuing criminal enterprise in that they did violate Title 21, United States Code, Sections 841(a)(1), 952 and 963, which violations were part of a continuing series of violations of said statutes undertaken by each defendant in concert with at least five other persons, with respect to whom the defendants occupied a position of organizer, supervisor, and manager, and from which continuing series of violations the defendants obtained substantial income and resources to which the United States is entitled to forfeiture, including all profits obtained by the defendants in such enterprise, and any of the interests, property and contractual rights of any kind affording a source of

influence over such enterprises; in violation of Title 21, United States Code, Section 848.

A TRUE BILL

_____

FOREPERSON

/s/ Attlee W. Wampler, III

ATLEE W. WAMPLER, III
UNITED STATES ATTORNEY

/s/ Barbara D. Schwartz

BARBARA D. SCHWARTZ
ASSISTANT UNITED STATES
ATTORNEY

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO.

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, THE HON. C. CLYDE ATKINS PRESIDING,

CASE NO. 72-290-Cr-CA
CASE NO. 73-75-Cr-CA

UNITED STATES OF AMERICA,
Appellee,

versus

CLIFTON RAY MIDDLETON
Appellant.

GOVERNMENT'S RESPONSE TO APPELLANT'S APPLICATION FOR ADMISSION TO BAIL PENDING APPEAL

The First Amendment does not give to Mr. Middleton the right to import marijuana or possess even a small amount of it. Nor has the Government at any time admitted or conceded or stipulated that Mr. Middleton's beliefs were sincere. It was never addressed by the Government as it was not the essence or under the circumstances even an essential part of the case. Even if a court were to say that a person would have the

right to possess a small amount for his own personal use due to a religious conviction (and to date no court has so said) it still would not entitle him to import it or distribute it and Mr. Middleton admitted on the stand that if he was asked for some by another member of the "Church" he would allow them to have it.

1. The defendant was convicted of:

    1. Importation of marijuana

    2. Simple possession of marijuana

    3. Three counts of resisting, opposing, impeding or interfering with a Federal Officer under 18 USC 111 and 1114.

    4. Bond jumping.

Although in paragraph numbered one Mr. Tifford refers to Mr. Middleon"s "surrender/rearrest," it is a fact that Mr. Middleton did *not* surrender but rather was arrested on a separate indictment 79-379-Cr-WMH and at the time of the arrest he was identified as Peter Sheets. He was found to be in possession of a Florida Drivers License in the name of Peter Sheets and another license in the name of Stanley Gilmore. Both Drivers Licenses had the picture of Clifton Ray Middleton. It should also have been brought to the Court's attention that although Mr. Middleton did not fail to appear subsequent to that arrest he definitely left the jurisdiction of both Judge Atkins and Judge Hoeveller without their permission for the purpose of importing over 24 tons of marijuana into Maine.

2. The District Court did permit Mr. Middleton to remain at liberty past the date of the original order of surrender based upon representations of his attorney, at that time Mr. Gwinn, that it was necessary especially due to his health and the need to be able to confer with him.

3. Mr. Tifford failed to advise this Court that Mr. Middleton was convicted on June 19, 1981 of the following:

1. Conspiracy to possess with intent to distribute marijuana

2. Conspiracy to import marijuana

3. Two counts of possession with intent to distribute marijuana

4. Distribution of marijuana

5. The court directed a verdict on an 848 Count.

That there was proof at the trial of some 70 tons of marijuana being smuggled in to this country by a group of people that used a "Church" as a cover. That this conspiracy was ongoing for at least 8 years including the importation in Maine which was after 19 defendants were indicted and subsequent to one trial being aborted due to the illness of one of the attorneys.

4. On June 19th at approximately 12:00 P.M. the defendant Middleton was ordered to surrender at 4:00 P.M. on that date and according to my recollection and the Marshal's records he surrendered on that date.

5. Federal authorities have never conceded to the sincerity of the defendant's belief in the "Church" or in the sincerity of marijuana being a sacrament of the "Church." We have found it unnecessary to address the point as under present case law it would still not legitimize their importing marijuana or using it in this country and because we can (and have in 79-379-Cr-WMH) proven that they have imported an amount too great just to be used as a sacrament. The Government also proved that it was in fact *sold* outside of the "Church."

The offense did allege and the testimony (which the lower court heard and can consider) did show violence on the part of this defendant. The fact that the jury's verdict reflected lack of violence can be attributed to many factors the least of which would not be sympathy. (The defendant had his pregnant wife come in to take the stand).

Mr. Funes, one of the main investigators testified he had recently received information as to the possession of weapons by "Coptics" (see pg. 43 of defendant's exhibit #5).

6. Although the defendant does have a wife and children the principle place of the Zion Coptic Church is Jamaica. The seemingly unlimited resources of the defendant are further proof that he would not be precluded from leaving the country. Although there was testimony as to the "Church's" resources in Jamaica none were described for the branches in the U.S., but rather the amount of marijuana smuggled into this country by this organization would reasonably infer where their wealth lies. Nor did anyone testify as to any amount provided these people by the Jamaican "Church."

The testimony as to the number of members in the U.S. was 75-100 in the Florida area and Florida having the largest community.

7. The defendant's record of appearances should in fact weigh heavily against the defendant as he was a fugitive for 7 years and then was rearrested (*not* surrendered) and the defendant then left the jurisdiction without permission of the court. Although the defendant's motion was filed July 7th Mr. Tifford has continuously ignored the five count conviction of the defendant on June 19th. Since Mr. Middleton left the jurisdiction while under extremely high bonds that clearly demonstrates there are no conditions that could insure the appellant would not flee.

8. The Government has not been provided with defendant's exhibit #6 and therefore can make no response.

9. It is the contention of the Government that the defendant had failed in his burden of establishing that he will not flee or pose a danger to any other person or to the community and the Government relies on the following cases in its prayer for the court's denial of the appellant Middleton's Application for Admission to Bail Pending Appeal: *U.S. v. Quicksey*, 371 F. Supp. 561 (S.D. W. Va. 1974); *U.S. v. Hawkins*, 617 F.2d 59 (5th Cir. 1980); *U.S. v. Provenzano*, 605 F.2d 85 (3rd Cir. 1979); *U.S. v. Miranda*, 442 F. Supp. 786 (S.D. Fla. 1977); *U.S. v. Erving* 280 F. Supp. 814 (N.D. Cal. 1968); 18 U.S.C. 3146(b). The Government particularly adopts the Order Revoking Bond by Judge C. Clyde Atkins dated 4/28/81, with the following exceptions:

¶2. "The appeal cannot be characterized as frivolous, because of the constitutional questions. . . ."

In the light of the defendant's subsequent conviction we do not believe that ground can lie.

¶4. "I do not consider defendant's employment history a negative factor relating to bond . . ."

Government believes it should be a negative factor.

¶5. It is the Government's position that his substantial resources would not be a factor against flight especially since there are IRS liens on the major realty.

¶6. The Government does not believe the defendant to be sincere in his beliefs as evidenced by the investigation and testimony.

Respectfully submitted,

ATLEE W. WAMPLER, III
UNITED STATES ATTORNEY

BY: /s/ Barbara D. Schwartz
BARBARA D. SCHWARTZ
ASSISTANT UNITED
STATES ATTORNEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Government's Response to Appellant's Application for Admission to Bail Pending Appeal was mailed this 16th day of July, 1981 to Arthur W. Tifford, Esq., 1531 N.W. 15th Street Road, Miami, Florida 33125.

/s/ Barbara D. Schwartz
BARBARA D. SCHWARTZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed this 19 day of April, 1982 to: Solicitor General of the United States, Department of Justice Building, Washington, D.C. 20530.

MELVYN KESSLER, Esquire
and
ARTHUR W. TIFFORD, Esquire
Co-Counsel for Petitioners
1531 N.W. 15 Street Road
Miami, Florida 33125
305-324-4104

BY Melvyn Kessler
MELVYN KESSLER